IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7320 OF 2004

Shri. Netaji Vishwasrao Nalawade
and Ors. ... Petitioners

Vs.

State of Maharashtra and Ors. ... Respondents

Mr. P.R. Arjunwadkar for Petitioners.

Mrs. S.S. Bhende, A.G.P. for R. Nos. 1 and 2.

CORAM : F.I. REBELLO &
S.P. KUKDAY,JJ.
DATED : APRIL 21, 2005

P.C.

. Rule. Heard forthwith.

. The acquisition is for the widening of the National Highway. The award was passed on 31.12.2002. The Petitioner has accepted the compensation and possession of the land has been taken and work is currently in progress.

. On behalf of the Petitioner, their learned counsel points out that the acquisition for the National Highway is now governed by the provisions of the National Highways Lands (Amendment) Act, 1997 which came into force on 24.1.1997. By virtue of the said Act, if the Central Government is satisfied that for the public purpose any land is

required for building maintenance, management or operation of the National Highway or part thereof it may acquire the land. Under Section 3J it is set out that nothing in the land Acquisition Act would apply to acquisition under this Act. On behalf of the Petitioner, learned counsel makes a statement that once the acquisition is for the purposes set out, under Section 3G the acquisition could only be under the provisions of the National Highways Laws (Amendment) Act, 1997. The present acquisition done under the Land Acquisition Act is a nullity at law and consequently the award will have to be set aside.

. We have heard the learned counsel for the parties. We have noted that possession of the land has been taken. The compensation has been paid and the work is going on for construction of the national highway. The entire proceedings were done under the provisions of the Land Acquisition Act. In case of a person aggrieved by the award made under the National Highways (Amendment) Act, 1997 the remedy for enhancement is by proceedings under Section 3G(5)(6). It is the case of the Petitioner that they are not aware as to who is the competent authority.

. If the argument is accepted the entire award may have to be set aside.

. Considering the peculiar facts and circumstances of the present case, and the construction of Section 3J we find that the bar may only apply in the event the acquisition is done under the provisions of the National Highways (Amendment) Act, 1997 and may not apply if the acquisition is done under the provisions of the Land Acquisition Act. We do not propose to decide the issue finally for the order to be passed, as in the instant case, the acquisition being under the Land Acquisition Act, it is open to the petitioner to move for the remedy under the provisions of the Land Acquisition Act.

. On the facts and circumstances of this case, considering the peculiar circumstance and with a view not to undo the acquisition already done, the notice of award will be deemed to be served on the Petitioner as contemplated by Section 12(2) of the Land Acquisition Act even if compensation has been received by the Petitioner, today i.e. 21st April, 2005. That being the case, it will be open to the Petitioner to apply for enhancement if in law they

are so entitled to, to the Land Acquisition Officer under Section 18, who will not go into the issue as to whether the reference is barred by limitation but refer the matter to the reference court on the issue on enhancement of the compensation as claimed by the Petitioner herein. Petition disposed of. Rule made partly absolute accordingly. No order as to cost.

(F.I. REBELLO,J.)

(S.P. KUKDAY,J.)